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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,930	08/28/2001	Phillip Brandt Bird	T6588.A.CON	7088
26481	7590	04/01/2003		
GRANT R CLAYTON CLAYTON HOWARTH & CANNON, PC P O BOX 1909 SANDY, UT 84091-1909			EXAMINER WARD, JOHN A	
			ART UNIT 2875	PAPER NUMBER
			DATE MAILED: 04/01/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

Applicant(s)

09/941,930

BIRD ET AL

Examiner

Art Unit

John A. Ward

2875

**Office Action Summary**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 07 January 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 37-41 is/are allowed.
- 6) Claim(s) 1-36 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1) Certified copies of the priority documents have been received.  
 2) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- Notice of References Cited (PTO-892)  
 Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 Information Disclosure Statement(s) (PTO-1449, Paper No(s) \_\_\_\_\_)

- 4) Interview Summary (PTO-413, Paper No(s).  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other

## DETAILED ACTION

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,280,050. Although the conflicting claims are not identical, they are not patentably distinct from each other because see table below.

#### ***Regarding the claims:***

Instant Application	Patent ('050)	Discussion or Differences
1	1	Claim 1 of the instant application is broader in scope of the patented Claim 1.
2	2	The limitation of each claim is identical.
3	3	The limitation of each claim is identical.
4	4	The limitation of each claim is identical.

5	5	The limitation of each claim is identical.
6	8	The limitation of each claim is identical.
7	7	The limitation of each claim is identical.
8	8	The limitation of each claim is identical.
9	9	The limitation of each claim is identical.
10	10	The limitation of each claim is identical.
11	11	The limitation of each claim is identical.
12	12	The limitation of each claim is identical.

Claims 13-19 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-19 of U.S. Patent No. 6,280,050. Although the conflicting claims are not identical, they are not patentably distinct from each other because see table below.

***Regarding the claims:***

Instant Application	Patent ('050)	Discussion or Differences
13	13	Claim 13 of the instant application is broader in scope of the patented Claim 13.
14	14	The limitation of each claim is identical.
15	15	The limitation of each claim is identical.
16	16	The limitation of each claim is identical.

17	17	The limitation of each claim is identical.
18	18	The limitation of each claim is identical.
19	19	The limitation of each claim is identical.

Claims 20-29 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-29 of U.S. Patent No. 6,280,050. Although the conflicting claims are not identical, they are not patentably distinct from each other because see table below.

***Regarding the claims:***

Instant Application	Prior art ('050)	Discussion or Differences
20	20	Claim 20 of the instant application is broader in scope of the patented Claim 20.
21	21	The limitation of each claim is identical.
22	22	The limitation of each claim is identical.
23	23	The limitation of each claim is identical.
24	24	The limitation of each claim is identical.
25	25	The limitation of each claim is identical.
26	26	The limitation of each claim is identical.
27	27	The limitation of each claim is identical.
28	28	The limitation of each claim is identical.
29	29	The limitation of each claim is identical.

Claims 30-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13 and 20-23, of U.S. Patent No. 6,280,050. Although the conflicting claims are not identical, they are not patentably distinct from each other because see table below.

Instant application	Prior art ('050)	Discussion or differences
30	20	Claim 30 of the instant application is incorporated in patented claim 20.
31	20	Claim 31 of the instant application is incorporated in the patented claim 20.
32	22	Claim 32 of the instant application is incorporated in the patented claim 22.
33	22	Claim 33 of the instant application is incorporated in the patented claim 22.
34	23	Claim 34 of the instant application is incorporated in the patented claim 23.
35	21	Claim 35 of the instant application is incorporated in the patented claim 21.

36	13	Claim 36 of the instant application is incorporated in the patented claim 13.
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***Allowable Subject Matter***

Claims 37-41 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Regarding independent claim 37, nowhere is found a flexible flashlight extension having a first fitting and second fitting, the first fitting arranged to interface removably with an end of the flashlight and the second end arranged to interface removably with the head of the flashlight. A body connected between the first and second end fittings, along with means for holding the body in a deformed shape, means for forming a non conductive barrier, means for conducting electricity from the first end fitting to the second end fitting and a covering for each of the above mention means.

***Response to Arguments***

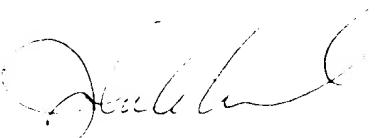
Applicant's arguments, see page 16, filed January 7, 2003, with respect to the rejection(s) of claim(s) 1-29 under statutory double patenting have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bird et al ('050) now bringing amended claims 1-36 under non-statutory double patenting which can be overcome with a terminal disclaimer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 703-305-5157. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 703-305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0596.

JAW  
March 25, 2003

  
John A. Ward  
Patent Examiner AU 2875